

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
Streamlining Deployment of Small Cell)	WT Docket No. 16-421
Infrastructure by Improving Wireless Facilities)	
Siting Policies)	
)	
Mobilitie, LLC Petition for Declaratory Ruling)	

**COMMENTS OF THE
DUPAGE MAYORS AND MANAGERS CONFERENCE**

These Comments are filed by the DuPage Mayors and Managers Conference (Conference) in response to the Public Notice, released December 22, 2016, in the above-entitled proceeding.

INTRODUCTION

The Conference is a coalition of 33 cities and villages representing over one million people. The Conference is a not-for-profit organization dedicated to addressing municipal public policy issues.

MUNICIPALITIES HAVE A PUBLIC DUTY TO PRESERVE AND PROTECT THE RIGHTS-OF-WAY

Illinois state law provides municipalities with extensive discretion with respect to permitted uses, special uses, and variances with respect to land uses. This discretion is rooted in the variety of urban, suburban, and rural small and medium communities, and in how land use planning impacts each type of community differently. Different land uses within a municipality may necessitate different siting and aesthetic requirements, for example undergrounding or camouflage along main commercial routes. These specific needs must be addressed in the application process and require municipalities to examine applications on an individual basis to ensure collocation requests are structurally sound and aesthetically appropriate given the location.

While local governments support the goal of providing reliable cellular coverage throughout our communities, we must also consider and protect the health, safety, and welfare of the public. If the ability of municipalities to regulate the location and installation of wireless facilities within their jurisdictions is limited, communities will face a threat to public safety. Providers may otherwise locate wireless facilities where they would interfere with or interrupt critical municipal

systems used by police, firefighting, water, and other local operations such as supervisory control and data acquisition (SCADA) systems. At a meeting this past fall, Mobilitie representatives informed Conference members that they are submitting applications to site wireless facilities in locations they have identified using Google Maps. Municipalities must have recourse to address unsafe installations or dangerous equipment.

MUNICIPALITIES ARE WORKING PROACTIVELY TO DEPLOY WIRELESS INFRASTRUCTURE

In Illinois, right-of-ways are held as a public trust; other than joint utility locating, control and management of the right-of-way is not controlled by the state, but, rather, is the responsibility of municipalities and counties. In 2007, the Illinois Municipal League (IML) prepared a model Right-of-Way Control Ordinance based on best practices that addressed siting of public utilities. Many Illinois communities have adopted the model ordinance. In 2016, the IML worked with municipal attorneys and attorneys from the telecommunications industry to create a model Small Cell Antenna/Tower Right-of-Way Siting Ordinance that dovetails with the model Right-of-Way Control Ordinance. This represents an effort by Illinois municipalities to develop reasonable standards intended to strike a balance between the needs of wireless carriers to improve capacity and density, and the needs of municipalities to preserve proper use of the right-of-way with a focus on safety and protection of other utilities located in the right-of-way.

However, one size does not fit all. Municipalities are diverse and many Illinois municipalities have enacted or are in the process of enacting local ordinances and/or master license agreements to ensure efficient processing of wireless facilities requests. Conference member municipalities first reported hearing from Mobilitie in the late spring of 2016. Each municipality must be given a chance to develop reasonable regulations that will ensure reliable cellular coverage and simultaneously protect their community's specific needs.

THE INDUSTRY SHOULD DO MORE VOLUNTARILY TO IMPROVE WIRELESS SITING

Mobilitie's Petition for Declaratory Ruling attempts to address the cost of permitting by suggesting that municipalities should only be able to charge a minimal fee for processing the permit. That fee would essentially amount to the time it takes a permit technician only to review the permit form. It does not include the cost of plan review, either in-house or by an outside contractor, or the cost of permit inspection, again either by an in-house inspector or outside contractor. It also does not include the cost of staff time to review information required from the carrier if the tower or wireless facility is subject to a special use permit based on its proposed location within the municipality.

Illinois municipalities are allowed to pass the costs of these permit-related functions on to a wireless carrier under Illinois law. If Mobilitie indeed considers itself to be a utility, it should be treated the same way as any other wireless carrier with regard to paying for the true costs of permitting including all staff time, review, and inspection.

To further compound the issue, several municipalities in Illinois have reported receiving incomplete applications from Mobilitie. In these reported cases, the municipalities requested additional information from Mobilitie, but the Mobilitie failed to respond. At least two member municipalities have also attempted to reach a consensus with Mobilitie on a master license agreement. These municipalities were given the impression by Mobilitie representatives that Mobilitie would agree to the master license agreement, but are still waiting, several months later, for any response from Mobilitie.

One member municipality denied an application from Mobilitie because of Mobilitie's statement that they are a public utility. The municipality does not agree that Mobilitie is a public utility, and since Mobilitie's goals were private in nature they were denied access to put a tower in the municipality's right-of-way.

Another member municipality received a permit application from AT&T Mobility approximately 2 years ago to install a small cell antenna in the right-of-way in a historic downtown area that is heavily trafficked by people. The municipality contacted AT&T Mobility representatives about relocating their proposed facility because it would detract from the streetscape and the Village has plans to relocate the utility poles along the street in that area to underground. AT&T Mobility was willing to relocate the antenna and municipal staff identified other poles that met AT&T Mobility's criteria. Unfortunately, none of the locations were satisfactory to AT&T. After going back and forth several times, both parties mutually agreed on a location approximately 1 block north and 1 block east of the original spot. The municipality found that while the antenna location was not visible from the main intersection of its downtown, it still detracted from the look of the right-of-way. Local residents also complained about the size of the equipment in the yard and the look of the utility pole after installation. Additionally, it took AT&T Mobility months to restore the parkway, and the utility box has never been landscaped, as required, to conceal the appearance of the box. (See images below.)

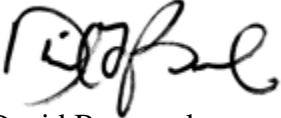


These are just a few of the problems that the Conference's member municipalities have encountered while attempting to work with wireless providers and infrastructure companies. These situations demonstrate that municipalities often have reasonable explanations for denying or deeming an application incomplete or requiring a different location for the siting of wireless facilities and equipment. Something as seemingly simple as creating an automatic approval timeline is one-sided and detrimental; it presumes that municipalities are negligent and wireless providers never are, and when a permit submittal is incomplete or inadequate the municipality would have no recourse relative to the automatic approval clause. The industry could and should do more to voluntarily improve wireless siting and limit the burden on municipalities and their residents.

CONCLUSION

The Conference would like to thank the Commission for its efforts to better understand the work being done at the local government level to ensure safe, responsible deployment of wireless infrastructure, particularly that which is built in the public rights-of-way. We strongly urge the Commission to consider our comments, as well as those submitted by communities across the country, before taking any action that may adversely affect local governments' authority.

Respectfully submitted,



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